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No. 446

In the Supreme Court
of the
United States

OCTOBER TERM, 1936.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION, PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

REES TURPIN,
Solicitor for Respondents.

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The petitioner seeks a review on writ of certiorari of the decision of the United States Circuit Court of Appeals for the Eighth Circuit on the grounds that the decision in this cause is in conflict with another Circuit Court of Appeals and with applicable decisions of this court.

We respectfully submit that a correct understanding of the decision will demonstrate not only that it is not in conflict with the decisions of this and other courts, but, on the contrary, is in accord with the decisions of this court and that no grounds are presented for granting the writ.

ARGUMENT.

The cardinal defect of the petition for the writ is that not one of the cases cited by the petitioner as being in conflict involves the application of the declaratory judgment statute to the facts disclosed by the record in this case. Nothing decided by any other court of appeals or by this court would, if applied to the facts of this case, lead to any conclusion different from that reached by the Circuit Court of Appeals for the Eighth Circuit in the opinion and decision attacked by the petition here.

The decision here is so clearly stated in the opinion of Judge Thomas that rather than to attempt to construe it for this court we refer you to it with the belief it will interpret itself as you read it. It is found on pages 145 to 150 of the record.

We respectfully submit that the interpretation of the Declaratory Judgment Act contended for by appellant, the petitioner here, is not only broader than that intended and one which the language of the act will not support, but is broader than that given to it in any of the cases cited by petitioner. If the law should be construed as the appellant asks the courts to construe it, the procedure and practice in the federal courts would be revolutionized in a manner neither intended nor foreseen by the congress. Cases that lawyers have always thought were triable as actions at law would so amazingly be converted into suits in equity that there would be little of the old law procedure left.

Judge Otis, in his Opinion of District Court Sustaining Motion to Dismiss this case (R. 133) truly said:

> "If the company can seek such a declaratory judgment then any person who has entered into a contract with another and who fears he may be sued by that other for breach of contract may proceed, as does the plaintiff here, in advance of the institution of that suit, to have determined an issue of fact which that suit will present. Certainly in the enactment of this statute the Congress contemplated no such radical departure in our jurisprudence from the old procedure."

The petition in the District Court describes a dispute about the existence of a fact, namely the condition of Edwin P. Haworth's health at a given time, and not a controversy as to the legal conclusion that might be drawn from established facts or those capable of simple demonstration. The purpose of the proceeding is not to settle any present "rights or other legal relations," but to settle one particular fact that may later be called into question in a possible suit, a suit that may possibly be brought at some future time upon life insurance policies which contain certain provisions applicable in event of disability of the insured.

This dispute is not even as to a completed fact capable of exact and final ascertainment, but as to a fact probably changing and resting somewhat in opinion.

Four of the policies (No. 537284, R. 59; No. N 760251, R. 79; No. N 808571, R. 99; No. N 808572, R. 119) provide that the disability provision is conditional upon continuance of total disability, and that upon recovery beyond that stage the disability benefit shall cease. The amount involved in the other is not enough for federal jurisdiction.

The purpose of the proceedings at bar is not to determine whether the defendants are entitled to recover at this time a judgment for a specific amount of

money against the plaintiff, but to determine whether the insured is disabled within the meaning of the policies of insurance upon his life. If he should now establish that fact he would not be entitled to a present judgment against the insurance company; it would not determine finally his right to a judgment in a future action. The adjudication would not be susceptible of violation and could not call for enforcement. It would not finally adjudicate the standing of the parties. If it should be declared that the insured now is disabled within the meaning of the policies, a similar proceeding could be brought at the end of each premium period to determine whether the insured were still disabled. That seems to us to reduce plaintiff's contention to an absurdity, for surely a court of equity would not enter any order or decree that would require a claimant to establish innumerable times a fact that would be an essential element in his recovery at some future time when a completed cause of action would accrue in his favor.

The inappropriateness of declaratory procedure to a judicial investigation of disputed facts, or to an inquiry where if the decision should go in one way it might involve further litigation, or to an inquiry that would not necessarily lead to a final determination of a right of one litigant against the other or of any rights or other legal relations between the parties, seems self evident. Such inappropriateness has been frequently stated by courts entitled to respect.

Lewis v. *Green*, Law Reports, (1905) H Ch. Div., 340;

Ziegler v. *Pickett*, 46 Wyo., 283, 25 Pac. (2d) 391;

Newsum et al. v. *Interstate Realty Co., et al.* 152 Tenn., 302, 278 S. W. 56;

Ladner et al. v. *Siegel et al.*, 294 Pa. 368, 144 Atl. 274;

Washington Detroit Theatre Co. v. *Moore*, 249 Mich., 673, 229 N. W. 618;

Legal Periodical Digest, page 5073;

41 Yale Law Journal, June, 1932, pages 1195-1212;

45 Harvard Law Review, page 1089.

The decisions of this court cited by the petitioner as presenting a conflict with the decision of the United States Circuit Court of Appeals for the Eighth Circuit are *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S., 249, and *Fidelity National Bank & Trust Company* v. *Swope*, 274 U. S., 123. We respectfully submit that when what is decided in those cases is applied to the facts of this case, there is not only no conflict but any decision other than that of the Circuit Court of Appeals for the Eighth Circuit would be irreconcilable with them, or with *Arizona* v. *California*, 283 U. S. 423, 462; *Alabama* v. *Arizona*, 291 U. S. 286, 291; *United States* v. *West Virginia*, 295 U. S. 463, 474; *New Jersey* v. *Sargent*, 269 U. S. 328, 338; and *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 325.

It is argued that the decision conflicts with the decision of the Circuit Court of Appeals for the Fifth Circuit in *Gully* v. *Interstate Natural Gas Co.* 82 F. (2d), 145. That was a suit against a State Tax Collector which involved finally assessing a tax upon plaintiff's property, fixing a lien thereon, and selling it to collect the tax, all of which, it was alleged, the defendant had determined to do. The facts bear no resemblance to those presented by the record in this case. The petitioner contends that some of the language used by the Circuit Court of Appeals for the Fifth Circuit

should be applied to this case. We say that whether that language as applied to the facts to which it was there applied truly expressed the law or not, it does not follow that it is applicable to the facts of this case, and no semblance of a conflict appears.

We respectfully urge that the petition for certiorari be denied.

REES TURPIN,
Solicitor for Respondents.